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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

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# No. 567

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SPIELMAN MOTOR SALES CO., INC.,

*Appellant,*

*vs.*

WILLIAM C. DODGE, AS DISTRICT ATTORNEY OF NEW YORK COUNTY, STATE OF NEW YORK.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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## STATEMENT AS TO JURISDICTION BY APPELLANT, UNDER RULE 12.

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In support of the jurisdiction of this Court to review the above entitled cause on appeal, appellant respectfully submits the following statement:

### A. Statutory Provisions.

Judicial Code, Section 266; U. S. Code, Title 28, Section 380.

The validity of Chapter 781 of the laws of 1933 of the State of New York; the National Industrial Recovery Act, 48 Stat. 195, being part of Title 15 of the United States Code and part of Title 15 of the U. S. C. (Commerce and Trade) being Sections 701-712, inclusive, and the Code of Fair Competition for the Motor Vehicle Retailing Trade, adopted pursuant thereto, are involved herein.

### B. Dates of Orders Sought to Be Reviewed and Date of Application for Appeal.

The order sought to be reviewed herein was entered on the 18th day of October, 1934.

The petition for appeal was presented on November 10, 1934, together with an Assignment of Errors.

### C. Nature of Case and Rulings Below.

Appellant Spielman Motor Sales Co., Inc., brought suit in the United States District Court for the Southern District of New York to restrain and prohibit the defendant, William C. Dodge as District Attorney of New York County, State of New York, from proceeding with a threatened prosecution of the complainant-appellant for an alleged violation of the provisions of the Code of Fair Competition for the Motor Vehicle Retailing Trade adopted pursuant to the provisions of the National Industrial Recovery Act and made part of the laws of the State of New York pursuant to the provisions of Chapter 781 of the laws of 1933 of the State of New York.

The petition alleged that Chapter 781 of the Laws of 1933, the National Industrial Recovery Act and the Code of Fair Competition for the Motor Vehicle Retailing Trade adopted pursuant thereto and made part of the law of the State of New York by virtue of Chapter 781 of the laws of 1933 of the State of New York, were invalid, null, void and

unconstitutional under both the New York State Constitution and the Federal Constitution, more particularly but not exclusively, the Fourteenth Amendment of the United States Constitution and the Fifth Amendment of the United States Constitution.

Notice of application for a temporary injunction to be heard on the 7th day of August, 1934, was duly served by the complainant-appellant upon the defendant-appellee. Said application was heard before a Court of three Judges organized pursuant to the Statutory provisions of U. S. C. Title 28, Section 380 on the 16th day of August, 1934. Thereafter and on the 18th day of October, 1934, the District Court entered an order denying the application of the complainant-appellant for a temporary injunction and dismissed the bill of complaint from which order this appeal is being taken within thirty days from the rendition thereof.

The complainant-appellant alleges by its assignment of errors filed herewith that the District Court convened pursuant to U. S. C. Title 28, Section 380, erred in denying the application of the complainant-appellant for a temporary injunction as a matter of law and that it erred in failing to hold the statutes cited above unconstitutional, null and void.

## D. Cases Sustaining the Jurisdiction of This Court of This Appeal.

*Tyson* v. *Banton*, 273 U. S. 418;
*Packard* v. *Banton*, 264 U. S. 596;
*Terrace* v. *Thompson*, 216 U. S. 194;
*Truax* v. *Raich*, 239 U. S. 36;
*Hegeman Farms Corporation* v. *Charles H. Baldwin* (No. 27, October Term, 1934, Decided November 5, 1934, United States Supreme Court, not officially reported yet).

We therefore respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal.

Respectfully submitted,

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(5731-C)